

**99TH GENERAL ASSEMBLY****State of Illinois****2015 and 2016****SB0047**

Introduced 1/15/2015, by Sen. James F. Clayborne, Jr.

**SYNOPSIS AS INTRODUCED:**

820 ILCS 175/2  
820 ILCS 175/5  
820 ILCS 175/12  
820 ILCS 175/95

Amends the Day and Temporary Labor Services Act. In the Section containing legislative findings, adds a finding that temporary laborers are vulnerable to discriminatory practices. Defines "day or temporary labor applicant". In a Section concerning recordkeeping, provides that the day and temporary labor service agency shall keep a record of the race, ethnicity, and gender of each day or temporary laborer or day or temporary labor applicant, as provided by the person who requests employment with or is contracted by the day and temporary labor service agency (instead of "the race and gender of each day or temporary laborer sent by the day and temporary labor service agency"). Provides that the day and temporary labor service agency shall provide each day or temporary labor applicant with and retain a copy of a written notice signed by an employee of the day and temporary labor agency and specifying the date, time, and location the applicant requested employment. Provides that at the time of annual registration, the day and temporary labor service agency shall submit to the Department of Labor, on a form created by the Department, a report containing the information required by the new provisions, grouped by branch office, in the aggregate for all day or temporary laborers assigned within this State in the prior year. Provides that in the case of a health and safety or notice violation, a private right of action exists for compensatory damages and an amount between \$50 and \$500 for each violation (instead of "up to \$500 for the violation"). Makes corresponding changes.

LRB099 03700 HEP 23712 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Day and Temporary Labor Services Act is  
5 amended by changing Sections 2, 5, 12, and 95 as follows:

6 (820 ILCS 175/2)

7 Sec. 2. Legislative Findings. The General Assembly finds  
8 as follows:

9 Over 300,000 workers work as day or temporary laborers in  
10 Illinois.

11 Approximately 150 day labor and temporary labor service  
12 agencies with nearly 600 branch offices are licensed throughout  
13 Illinois. In addition, there is a large, though unknown, number  
14 of unlicensed day labor and temporary labor service agencies  
15 that operate outside the radar of law enforcement.

16 Recent studies and a survey of low-wage day or temporary  
17 laborers themselves finds that as a group, they are  
18 particularly vulnerable to abuse of their labor rights,  
19 including unpaid wages, failure to pay for all hours worked,  
20 minimum wage and overtime violations, ~~and~~ unlawful deduction  
21 from pay for meals, transportation, equipment and other items,  
22 and discriminatory practices.

23 Current law is inadequate to protect the labor and

1 employment rights of these workers.

2 At the same time, in Illinois and in other states,  
3 democratically run nonprofit day labor centers, which charge no  
4 fee for their services, have been established to provide an  
5 alternative for day or temporary laborers to solicit work on  
6 street corners. These centers are not subject to this Act.

7 (Source: P.A. 94-511, eff. 1-1-06.)

8 (820 ILCS 175/5)

9 Sec. 5. Definitions. As used in this Act:

10 "Day or temporary laborer" means a natural person who  
11 contracts for employment with a day and temporary labor service  
12 agency.

13 "Day or temporary labor applicant" means a natural person  
14 who requests a job assignment through a day and temporary labor  
15 service agency, whether in person, verbally, in writing, or  
16 through an online application process.

17 "Day and temporary labor" means work performed by a day or  
18 temporary laborer at a third party client, the duration of  
19 which may be specific or undefined, pursuant to a contract or  
20 understanding between the day and temporary labor service  
21 agency and the third party client. "Day and temporary labor"  
22 does not include labor or employment of a professional or  
23 clerical nature.

24 "Day and temporary labor service agency" means any person  
25 or entity engaged in the business of employing day or temporary

1 laborers to provide services, for a fee, to or for any third  
2 party client pursuant to a contract with the day and temporary  
3 labor service agency and the third party client.

4 "Department" means the Department of Labor.

5 "Third party client" means any person that contracts with a  
6 day and temporary labor service agency for obtaining day or  
7 temporary laborers.

8 "Person" means every natural person, firm, partnership,  
9 co-partnership, limited liability company, corporation,  
10 association, business trust, or other legal entity, or its  
11 legal representatives, agents, or assigns.

12 (Source: P.A. 94-511, eff. 1-1-06; 95-499, eff. 8-28-07.)

13 (820 ILCS 175/12)

14 Sec. 12. Recordkeeping.

15 (a) Whenever a day and temporary labor service agency sends  
16 one or more persons to work as day or temporary laborers, the  
17 day and temporary labor service agency shall keep the following  
18 records ~~relating to that transaction:~~

19 (1) the name, address and telephone number of each  
20 third party client, including each worksite, to which day  
21 or temporary laborers were sent by the agency and the date  
22 of the transaction;

23 (2) for each day or temporary laborer: the name and  
24 address, the specific location sent to work, the type of  
25 work performed, the number of hours worked, the hourly rate

1 of pay and the date sent. The term "hours worked" has the  
2 meaning ascribed to that term in 56 Ill. Adm. Code 210.110  
3 and in accordance with all applicable rules or court  
4 interpretations under 56 Ill. Adm. Code 210.110. The third  
5 party client shall be required to remit all information  
6 required under this subsection to the day and temporary  
7 labor service agency no later than 7 days following the  
8 last day of the work week worked by the day or temporary  
9 laborer. Failure of a third party client to remit such  
10 information to a day and temporary labor service agency  
11 shall not be a defense to the recordkeeping requirement of  
12 this Section;

13 (3) the name and title of the individual or individuals  
14 at each third party client's place of business responsible  
15 for the transaction;

16 (4) any specific qualifications or attributes of a day  
17 or temporary laborer, requested by each third party client;

18 (5) copies of all contracts, if any, with the third  
19 party client and copies of all invoices for the third party  
20 client;

21 (6) copies of all employment notices provided in  
22 accordance with subsection (a) of Section 10;

23 (7) deductions to be made from each day or temporary  
24 laborer's compensation made by either the third party  
25 client or by the day and temporary labor service agency for  
26 the day or temporary laborer's transportation, food,

1 equipment, withheld income tax, withheld social security  
2 payments and every other deduction;

3 (8) verification of the actual cost of any equipment or  
4 meal charged to a day or temporary laborer;

5 (9) the race, ethnicity, and gender of each day or  
6 temporary laborer or applicant, as provided by the person  
7 who requests employment with or is contracted ~~sent~~ by the  
8 day and temporary labor service agency. The day and  
9 temporary labor service agency shall provide each day or  
10 temporary labor applicant with and retain a copy of a  
11 written notice signed by an employee of the day and  
12 temporary labor agency and specifying the date, time, and  
13 location the applicant requested employment ~~, as provided~~  
14 ~~by the day or temporary laborer;~~ and

15 (10) any additional information required by rules  
16 issued by the Department.

17 (b) The day and temporary labor service agency shall  
18 maintain all records under this Section for a period of 3 years  
19 from their creation. The records shall be open to inspection by  
20 the Department during normal business hours. Records described  
21 in paragraphs (1), (2), (3), (6), (7), and (8) of subsection  
22 (a) shall be available for review or copying by that day or  
23 temporary laborer during normal business hours within 5 days  
24 following a written request. In addition, a day and temporary  
25 labor service agency shall make records related to the number  
26 of hours billed to a third party client for that individual day

1 or temporary laborer's hours of work available for review or  
2 copying during normal business hours within 5 days following a  
3 written request. The day and temporary labor service agency  
4 shall make forms, in duplicate, for such requests available to  
5 day or temporary laborers at the dispatch office. The day or  
6 temporary laborer shall be given a copy of the request form. At  
7 the time of registration with the Department under Section 45  
8 of this Act, the day and temporary labor service agency shall  
9 submit to the Department, on a form created by the Department,  
10 a report containing the information identified in paragraph (9)  
11 of subsection (a) of this Section, grouped by branch office, in  
12 the aggregate for all day or temporary laborers assigned within  
13 this State in the prior year. It is a violation of this Section  
14 to make any false, inaccurate or incomplete entry into any  
15 record required by this Section, or to delete required  
16 information from any such record. Failure by the third party  
17 client to remit time records to the day and temporary labor  
18 service agency as provided in paragraph (a) (2) shall constitute  
19 a notice violation by a third party client under Section 95 of  
20 this Act unless the third party client has been precluded from  
21 submitting such time records for reasons beyond its control. A  
22 failure by the third party client to provide time records in  
23 accordance with this subsection (b) shall not be a notice  
24 violation and shall not be the basis for a suit or other action  
25 under Section 95 of this Act against the day and temporary  
26 labor service agency.

1 (Source: P.A. 94-511, eff. 1-1-06; 95-499, eff. 8-28-07.)

2 (820 ILCS 175/95)

3 Sec. 95. Private Right of Action.

4 (a) A person aggrieved by a violation of this Act or any  
5 rule adopted under this Act by a day and temporary labor  
6 service agency or a third party client may file suit in circuit  
7 court of Illinois, in the county where the alleged offense  
8 occurred or where any day or temporary laborer who is party to  
9 the action resides, without regard to exhaustion of any  
10 alternative administrative remedies provided in this Act. A day  
11 and temporary labor service agency aggrieved by a violation of  
12 this Act or any rule adopted under this Act by a third party  
13 client may file suit in circuit court of Illinois, in the  
14 county where the alleged offense occurred or where the day and  
15 temporary labor service agency which is party to the action is  
16 located. Actions may be brought by one or more day or temporary  
17 laborers for and on behalf of themselves and other day or  
18 temporary laborers similarly situated. A day or temporary  
19 laborer whose rights have been violated under this Act by a day  
20 and temporary labor service agency or a third party client or a  
21 day and temporary labor service agency whose rights have been  
22 violated under this Act by a third party client is entitled to  
23 collect:

24 (1) in the case of a wage and hour violation, the  
25 amount of any wages, salary, employment benefits, or other

1 compensation denied or lost to the day or temporary laborer  
2 or day and temporary labor service agency by reason of the  
3 violation, plus an equal amount in liquidated damages;

4 (2) in the case of a health and safety or notice  
5 violation, compensatory damages and an amount between \$50  
6 and up to \$500 for each ~~the~~ violation of each subpart of  
7 each Section;

8 (3) in the case of unlawful retaliation, all legal or  
9 equitable relief as may be appropriate; and

10 (4) attorney's fees and costs.

11 (b) The right of an aggrieved person to bring an action  
12 under this Section terminates upon the passing of 3 years from  
13 the final date of employment by the day and temporary labor  
14 agency or the third party client or upon the passing of 3 years  
15 from the date of termination of the contract between the day  
16 and temporary labor service agency and the third party client.  
17 This limitations period is tolled if a day labor employer has  
18 deterred a day and temporary labor service agency or day or  
19 temporary laborer's exercise of rights under this Act by  
20 contacting or threatening to contact law enforcement agencies.

21 (Source: P.A. 96-1185, eff. 7-22-10.)